IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.829 OF 2001

M/s. Skypak Service Specialists Limited. ...Petitioner.
Vs.
Shri A. N. Ray & Ors. ...Respondents.
....
Mr. C. U. Singh with Mr.Mahesh Londhe for the Petitioner.
Mr. H. V. Mehta for the Respondents.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 3, 2004.

P.C.:

The Petitioner has challenged in these proceedings under Article 226 of the Constitution, an order dated 26th February 2001 passed by the Regional Provident Fund Commissioner, levying damages in the amount of Rs.68,22,297/-. These damages were levied for the period between August 1984 and February 2000 on account of a delayed payment of the contribution due and payable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (“the Act”) and the scheme framed thereunder.

2. The Petitioner is engaged in the business of providing

Domestic and International Courier Services. The Petitioner employs about 1200 employees including Managerial and Office staff at its establishments situated in various parts of the country. According to the Petitioner, between 1997 and 2000, there was a grave economic crisis in the business of the Petitioner, resulting inter alia from the loss of a contract with the main foreign collaborator/principal. The Petitioner was unable to pay the employees' contribution to the Provident Fund within time though it has been stated before the Court that contributions were eventually paid in full. By the month of March 2000, the arrears on account of contribution were to the extent of Rs. 1.98 crores.

3. A summons was issued under Section 7A of the Act on 28th April 2000 to the Petitioner and it has been stated that thereafter, the Petitioner deposited an amount of Rs. 1.21 crores, leaving a balance of Rs.77 lakhs. A meeting is thereafter stated to have been held with the Minister of Labour in the State Government on 3rd May 2000 in which it was decided that the Petitioner would make the outstanding payments in seven monthly instalments with interest.

4. On 22nd June 2000, an order was passed against the Petitioner under Section 7A of the Act. A Writ Petition (W.P. Lodging 1349 of 2000) filed by the Petitioner was heard and disposed of by a Learned Single Judge of this Court in terms of the following order dated 5th July 2000:

> "1. Mr.Singh on instructions from his client states that a sum of Rs.30 lacs will be paid on or before 31st July 2000. The balance amount will be paid by four equal monthly installments. The first installment will be paid on or before 15th September 2000. The other three installments will be paid on or before 7th of each month i.e. First installment on or before 7th December 2000. Thereafter interest will also be paid in four equal monthly instalments. The first installment will be paid on or before 7th January 2001, second instalment on or before 7th February 2001, third installment on or before 7th March 2001 and fourth installment on or before 7th April 2001. The Petitioner will continue with the current compliance of the dues.
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> 2. These installments will be granted by incorporating all the necessary conditions which are mentioned in the circular dated 8th August 1966 as amended upto date. This statement made by Mr. Singh is acceptable to the Commissioner Mr. H.D. Sharma, who is present in Court. In view of the agreement of Mr. Sharma, the Court hereby accepts the statement made by Mr. Singh. Mr. Sharma states that this order will be placed before the appropriate authority to obtain a formal order sanctioning the installments.
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> 3. On the Petitioner complying with the aforesaid terms and conditions, the impugned orders set out in prayer clause (a) shall not be enforced by the

Respondents.

4. In the event of any single default committed by the Petitioner, the aforesaid order shall stand vacated and the Respondents shall be at liberty to enforce the impugned orders.

Petition disposed of."

5. There is no dispute about the fact that all payments were made as stipulated in the order of the Learned Single Judge of this Court and the last instalment inclusive of interest was paid on 6th December 2000.

6. In August 2000, a team of Inspectors visited the establishment of the Petitioner to verify the records. The Petitioner was called upon to produce its records for verification. According to the Petitioner, these records were produced on 1st December 2000. A notice was issued on 4th January 2001, under Section 14-B of the Act. The contention of the Petitioner is that about this time, there was a serious conflict with Bharatiya Kamgar Sena and its members and its Deputy General Manager (Personnel) was assaulted in the office of the Provident Fund Commissioner on 5th October 2000. According to the Petitioner,

during the course of inspection, on 19th January 2001, it was found that 59 employees in the list of 185 employees were not borne on the roll of the Petitioner and fake names had been furnished by the Union. Moreover, it was allegedly found that the 126 remaining employees were covered under the Provident Funds Act and contribution in respect of these employees had already been deposited with the authorities.

7. By a letter dated 20th January 2001, the Petitioner sought to question the coverage of the Courier Industry under the Act. The Petitioner contended that on 8th February 1998, the Commissioner had erroneously sought to cover the Petitioner under the head of “Road Motor Transport”. According to the Petitioner, the provisions of the Act were not attracted to its establishment. Eventually, the impugned order dated 26th February 2001 came to be passed by which an amount of Rs. 68.22 lakhs has been levied as and by way of damages under Section 14-B.

8. Counsel appearing on behalf of the Petitioner has sought to submit that the impugned order passed by the Provident Fund Commissioner ex-facie discloses a non application of mind. The

order, it was submitted, contained no reasons at all and, therefore, there is a breach of the principles enunciated by the Supreme Court in **Organo Chemical Industries v. Union of India,** (1979) 4 SCC 573. Counsel submitted that under the order dated 15th July 2000, which was passed by a Single Judge of the Court in the presence of the P.F. Commissioner and with his consent, the petitioner was given instalments to pay the principal contribution as well as interest thereon. This was duly paid in accordance with the schedule indicated by the Court. In these circumstances, it is submitted that no case was made out for the levy of damages. Finally, it was urged that it was only on 22nd March 2001, after the writ petition was filed in this Court that, for the first time, a notification was issued under Section 1(3)(b) of the Act by the Central Government bringing within the purview of the Act, establishments engaged in Courier services. The authorities have prior thereto sought to cover the establishment of the Petitioner as an establishment engaged in the Road Motor Transport Industry or, alternatively, as a Clearing and Forwarding Agent. It was submitted that the Petitioner can neither be regarded as an establishment in the Road Motor Transport Industry, nor for that matter as a Clearing and Forwarding Agent. The Petitioner had

voluntarily accepted coverage under the Act prior to 2001. Having regard to all these facts and circumstances, it was urged that at least no case for the levy of damages has been made out.

9. The power to levy damages under Section 14-B of the Act has been considered by the Supreme Court in **Organo Chemical Industries v. Union of India,** (1979) 4 SCC 573. The Supreme Court held that the expression "damages" appearing in Section 14-B, is in substance, a penalty imposed on the employer for a breach of his statutory obligation. This is meant to penalise a defaulting employer and to provide reparation for the amount of loss suffered by the employees. The recording of reasons has been held by the Supreme Court to be an important safeguard against arbitrariness. In the present case, the order passed by the Provident Fund Commissioner contains no reasons beyond a bare disclosure of the period for which a delay had occurred to justify the levy of a penalty in respect of the said period. The contention of the Petitioner is that there is no habitual or willful default on its part and that in fact, in pursuance of the earlier proceedings, which took place before this Court which culminated in an order dated 5th July 2000 of a Learned Single Judge, the entire amount of

contribution together with interest had been duly paid in accordance with the time schedule which was indicated in the order of the Court. These are considerations which ought to have been taken into account by the Provident Fund Commissioner.

10. In these circumstances, I am of the view that there is justification in the submission which has been urged on behalf of the Petitioner that the matter be remanded back for a fresh determination by the authorities concerned. In order to facilitate fresh determination, and without expressing any final or conclusive opinion on the merits of the case, the impugned order of the Regional Provident Fund Commissioner dated 25th February 2001 is quashed and set aside. The Petitioner is directed to appear before the Regional Provident Fund Commissioner for directions on 20th December 2004. The Commissioner shall decide the matter afresh after giving an opportunity of being heard to the Petitioner in accordance with law, after considering rival submissions. The Petition is accordingly disposed of in the above terms. No order as to costs.

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